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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,586	10/29/2001	Edwin E. Suer	5788-01001	4694

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EXAMINER

ALIE, GHASSEM

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/047,586

Applicant(s)

SUER ET AL.

Examiner

Ghassem Alie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,8,11,12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7,9,10,13,14,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The drawings are objected to because Figs. 17a and 18 include a description for the feature shown in the Figures, instead of a reference character. It should be noted that In Figs. 17a and 18 at least a reference number should denote the holes for the prong 30. The assigned reference number should also be added to the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodges et al. (6,018,876), hereinafter Hodges. Regarding claim 1, Hodges teaches a food slicer utensil 10 having an elongated hollow body, which is supporting an elongated food item 30. Hodges also teaches that the elongated hollow body includes an inner wall, and outer wall, forming an interior, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Hodges also teaches a plurality of the blades 36, 38 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30. It should be noted that the blades 36 or 38 are extended across the interior from one side of the interior wall to another side of the interior wall. Hodges also teaches that the plurality of blades 36, 38 are the only blades of the food utensil and each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 36, 38. It should be noted that outer most portions of the blades 36, 38 are laterally aligned with respect to one another. See Figs. 1-6 and col. 3, lines 5-64 in Hodges.

Regarding claim 2, Hodges teaches everything noted above including a hollow body having an inner wall and outer wall forming an interior, an open first end and a second end, a cross-sectional area, and a length greater than the cross-sectional area. Hodges also teaches a plurality of the blades 36, 38 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30.

Regarding claim 9, Hodges teaches everything noted above including that the plurality of blades 36, 38 is fixed to the inner wall thereby preventing movement of the plurality of blades.

Regarding claim 10, Hodges teaches everything noted above including that the plurality of blades 36, 38 is fixed to open first end thereby preventing movement of the plurality of blades. It should be noted that the first end also is considered to be the location that blades are mounted to the inner wall of the tool 10. See Fig. 3 Hodges.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodges in view of Berler (4,250,771). Regarding claims 6, 7, and 13, Hodges teaches everything noted above except a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Hodges' food utensil with the food receptacle, as taught by Berler, in order to

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facilitate the slicing of the food by holding the food that it could be hot or hold the food item by the holder rather than the hand.

6. Claim 1, 2, 4, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Way (Des. 284,441) in view of Pesce (2,675,580). Regarding claim 1, Way teaches a utensil having an elongated hollow body, which is supporting an elongated food item. Way also teaches that elongated hollow body includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Way also teaches a single blade extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item. Way also teaches that the blade is the only blade of the food utensil. See Figs. 1-4 in Way. Way does not teach that a plurality of blades which is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. However, the use of a plurality of blade is well known in the art such as taught by Pesce. Pesce teaches a utensil 10 having an elongated hollow body 13, 45, which is supporting an elongated food item 22. Pesce also teaches that elongated hollow body 13, 45 includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Pesce also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 22. Pesce also teaches that plurality of blades is the only blades of the food utensil. Pesce also teaches that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-58 in Pesce. It should be noted that way teaches a single blade for slicing an elongated food item. However,

Pesce teaches that the food slicer can have one blade or more than one blade as desired. Therefore, it would have been obvious to a person of ordinary skill in the art to provide Way's food slicer with blades 46, as taught by Pesce, in order to slice the food item into a different desired shape and size.

Regarding claim 2, Way, as modified by Pesce, teaches everything noted above including a hollow body having an inner wall and outer wall forming an interior, an open first end and a second end, a cross-sectional area, and a length greater than the cross-sectional area. Way as modified by Pesce, also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30. See Fig. 15 in Pesce.

Regarding claim 4, Way teaches that the food slicer includes a base fixed to the second end. See Fig. 1 in Way.

Regarding claim 9, Way, as modified above, teaches everything noted above including that the plurality of blades 46 is fixed to the inner wall thereby preventing movement of the plurality of blades.

Regarding claim 10, Way, as modified above teaches everything noted above including that the plurality of blades 46 is fixed to open first end thereby preventing movement of the plurality of blades. See Fig. 15 in Pesce.

7. Claim 1, 2, 4, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce in view of Way. Regarding claim 1, Pesce teaches a utensil 10 having an elongated hollow body 13, 45, which is supporting an elongated food item 22. Pesce also teaches that elongated hollow body 13, 45 includes an inner wall, and outer wall forming an

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interior, an open first end and a second end, a diameter, and a length. Pesce also teaches a plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 22. Pesce also teaches that plurality of blades is the only blades of the food utensil. Pesce also teaches that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-58 in Pesce. Pesce does not expressly teach that the length of the elongated body is greater than its diameter. However, the use of a utensil for cutting an elongated food item and having an elongated body with a length greater than its diameter is well known in the art such as taught by Way. Way teaches a food for cutting an elongated food item and having an elongated body with a length greater than its diameter. See Figs. 1-4 in Way. It would have been obvious to a person ordinary skill in the art to provide Pesce's food slicer with an elongated body, as taught by Way, since the elongated body provides a better support of elongated food. In addition, it would have been obvious for a person of ordinary skill in the art to provide Pesce's hollow body with a length greater than its diameter, since the use of food slicer with elongated body that corresponds to an elongated food item is old and well known in the art, and it is well known that an elongated body provides a better support for an elongated food.

Regarding claim 2, Pesce teaches everything noted above including a hollow body having an inner wall and outer wall forming an interior, an open first end and a second end, a cross-sectional area, and a length greater than the cross-sectional area. Pesce, also teaches a

plurality of the blades 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 30. See Fig. 15 in Pesce.

Regarding claim 9, Pesce teaches everything noted above including that the plurality of blades 46 is fixed to the inner wall thereby preventing movement of the plurality of blades.

Regarding claim 10, Pesce teaches everything noted above including that the plurality of blades 46 is fixed to open first end thereby preventing movement of the plurality of blades. See Fig. 15 in Pesce.

8. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce in view of Way and in further view of Berler. Regarding claims 6 and 7, Pesce teaches everything noted above except a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Pesce's food utensil, as modified by Way, with the food receptacle, as taught by Berler, in order to facilitate the slicing of the food by holding the food item while the food item is being sliced.

9. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens (2,479,982) in view of Lin. Regarding claim 16, and 17, Steven teaches a method of slicing an elongated food item including the steps of providing a plurality of fixed blades 22 within an elongated hollow body 15 and across an interior of the body along a diameter of

the body. Stevens also teaches that the elongated body 15 has a length and a diameter. Stevens also teaches that the plurality of the blades is the only blades of the elongated body and each of the plurality of blades is substantially laterally aligned at an outermost thereof with respective outermost portion of each of the remaining plurality of blades. Stevens also teaches the step of affecting a relative motion between the elongated food item and the plurality of blades thereby slicing at least a portion of food item and yet supporting the elongated food item within the elongated hollow body. It should be noted that a potato is pushed downwardly into the blades 22. As the potato is sliced the sliced portions are supported by the interior walls of the hollow body. See Figs. 1-7 in Stevens. Stevens does not explicitly teach that the length of the elongated body is larger than its diameter. However, the use of an elongated food slicer having a length larger than its diameter is well known in the art such as taught by Lin. Lin teaches an elongated cutting device 10 that has a length larger than its diameter. See Figs. 3-4 in Lin. It would have been obvious to a person of ordinary skill in the art to provide the elongated body in Steven's food slicer with length larger than its diameter, as taught by Lin, in order to ensure that the interior walls of the elongated body are long enough to support the sliced portions of the food.

Allowable Subject Matter

10. Claims 13 and 14 are allowed. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach that the receptacle is slidably engaged along the outer wall of the hollow body.

Response to Arguments

11. Applicant's arguments that Hodges and Pesce, do not teach that the plurality of

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blades extending across the interior in a plane perpendicular to the inner and outer walls of the elongated body are not persuasive. It should be noted that the claims do not recite that the cutting edge of the blades are across the interior in a plane perpendicular to the inner and outer walls. Claims merely recite, "a plurality of blades extending across the interior in a plane perpendicular to said inner and outer walls". In this case, i.e., Pesce teaches that the blades, not the cutting edge of the blades, are across the interior in a plane perpendicular to said inner and outer walls. This is clearly shown in Fig. 2 in Pesce. In addition, the use of blades having a cutting edge extending across the interior in a plane perpendicular to said inner and outer walls of an elongated body is well known in the art, such as taught by Stevens.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-83006.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER

GA/ga

October 14, 2006